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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,883	04/14/2004	Neeraj Gupta	C7710(V)	5650

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EXAMINER

BOYER, CHARLES I

ART UNIT PAPER NUMBER

1751

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,883

Applicant(s)

GUPTA

Examiner

Charles I. Boyer

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/16/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, and 6-13 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-3, and 6-11 of copending Application No. 10/853327. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The independent claims differ in wording, but claim the same invention. The organic solvents of 10/853327 are encompassed by the dissolved gas of 10/823883.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5-8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramirez et al, US 6,106,817.

Ramirez et al teach instant lathering clear solutions and gels comprising from 3 to 50% surfactant, from 1 to 7% pentane, and the balance water (col. 8, claim 17). Note that isobutene is also a suitable hydrocarbon of the invention (col. 7, claim 9). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

3. Claims 1, 2, 6-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnett et al, US 5,326,556.

Barnet et al teach a self-foaming shaving gel comprising from 12 to 25% soap, from 1 to 5% pentane, and the balance water (col. 5, claim 1). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

4. Claims 1, 2, 6-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramirez et al, US 6,096,702.

Ramirez et al teach post-foaming clear solutions and gels comprising from 45 to 50% surfactant, from 1 to 7% pentane, and the balance water (col. 5, examples 1-19 and col. 8, claim 15). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

5. Claims 1, 2, 6-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Osipow et al, US 4,726,944.

Osipow et al teach an instant lathering shampoo comprising from 5 to 20% surfactant, from 2 to 10% pentane, and the balance water (col. 4, lines 5-17 and examples). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

6. Claims 1, 5-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Szymczak, US 5,858,343.

Szymczak teaches post-foaming shaving gels comprising from 3 to 20% surfactant, from 0.1 to 10% C3-5 hydrocarbons, and the balance water (col. 13,

claims 1 and 29). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

6. Claims 1, 5-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Chaussee, US 5,334,325.

Chaussee teaches post-foaming gels comprising from 15 to 30% surfactant, from 0.5 to 15% isobutane, and the balance water (col. 11, claims 1 and 10). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

7. Claims 1, 2, and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurtz, WO 97/25408.

Kurtz teaches self-foaming compositions for household use which are dispensed from a non-pressurized package (see abstract). An example of such a composition comprises 5.2% alkylbenzene sulfonic acid, citric acid, 1.9% isopentane and the balance water (page 19, example 4). Note that these compositions are contemplated for use on fabrics as pretreatment compositions (page 1, lines 17-19). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

8. Claims 1, 7, 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Grollier et al, US 4,871,530.

Grollier et al teach self-foaming compositions for the skin and hair, comprising 14% surfactant, 5% pentane, and the balance water (col. 18, example 6). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

9. Claims 1-4, 7, 8, and 10-12 are rejected under 35 U.S.C. 102(a) as being anticipated by Reidel et al, US 2002/0182234.

Reidel et al teach self-foaming cosmetic compositions comprising a 70/30 mixture of emulsion and nitrogen as the foaming agent. The emulsion comprises 8.5% PEG-20 stearate (page 17, example 1). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

10. Claims 1, 3-8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Monson, US 5,902,225.

Monson teaches post-foaming personal cleansing compositions comprising 30% surfactant, and 2% isobutene, which is diluted with 98.5 parts carbonated water (water with carbon dioxide dissolved therein) (col. 10, example 1). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

11. Claims 1, 5-8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al, US 5,523,081.

Edwards et al teach post-foaming shaving gels comprising 10.8% soap and 3% isopropane/isobutane (col. 7, example 2a). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

12. Claims 1, 3, 4, 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Harris, US 4,219,333.

Harris teaches an aqueous carbonated cleaning solution for carpet cleaning comprising 5% surfactant, 1% builder, and carbonated water (col. 8, claims 1 and 4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles I Boyer". The signature is fluid and cursive, with the first name "Charles" and last name "Boyer" clearly distinguishable.

Charles I Boyer
Primary Examiner
Art Unit 1751